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6 IN THE UNITED STATES DISTRICT COURT

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10 JEROME BEARD,  
11 Plaintiff, No. C 18-06783 WHA  
12 v.  
13 INTERNATIONAL BUSINESS  
14 MACHINES CORPORATION,  
15 Defendant.

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17 **ORDER DENYING MOTION FOR  
18 JUDGMENT ON THE PLEADINGS**

19 **INTRODUCTION**

20 In this employment dispute, plaintiff moves for judgment on the pleadings. For the  
21 reasons stated below, the motion is **DENIED**.

22 **STATEMENT**

23 A prior order provided the facts in full (Dkt. No. 51). In brief, plaintiff Jerome Beard  
24 has worked as a software sales representative at defendant International Business Machines  
25 Corporation since 1983. IBM paid Beard a salary plus uncapped commissions during his  
employment. IBM would assign Beard a revenue target and tie his commission compensation  
to a percentage of the target attained.

26 In July 2017, Beard received an “incentive plan letter” (IPL) from IBM that described  
27 his commission plan for the rest of 2017 and set his sales quota at \$934,736 (Dkt. No. 30-1).  
28 He also received and reviewed a PowerPoint presentation that repeatedly stated that payments

1 under the compensation plan would be uncapped. Furthermore, the PowerPoint stated that the  
2 IPL was the “primary 2017 education for IBM sales employees” and “[i]t covers the information  
3 you will need to understand your 2017 plan.” In 2017, Beard closed two large deals that  
4 generated \$25.2 million in revenue subject to commission. Beard alleges that he earned  
5 \$2,901,806 in commission based on these amounts, but IBM refused to pay full commission  
6 because it “was simply too much money to pay” (Dkt. No. 1 at 5–9).

7 In November 2018, Beard filed this civil action asserting (1) violation of California’s  
8 Labor Code Sections 2751 and 221, (2) violation of California’s Unfair Competition Law (UCL),  
9 (3) race discrimination, (4) unjust enrichment, (5) fraudulent misrepresentation, and (6) negligent  
10 misrepresentation. In April 2019, an order granted in part and denied in part IBM’s motion to  
11 dismiss Beard’s claims (Dkt. No. 51). Beard now moves for judgment on the pleadings against  
12 IBM under his second claim for relief alleging a UCL violation. This order follows full briefing  
13 and oral argument.

14 **ANALYSIS**

15 “Judgment on the pleadings is properly granted when there is no issue of material fact  
16 in dispute, and the moving party is entitled to judgment as a matter of law.” *Fleming v. Pickard*,  
17 581 F.3d 922, 925 (9th Cir. 2009) (citation and footnote omitted). Although Beard began  
18 working at IBM before California’s Labor Code Section 2751 came into effect, the statute still  
19 applies. There is a question of material fact, however, about whether or not the IPL is a contract.  
20 Accordingly, the motion for judgment on the pleadings is **DENIED**.

21 **CONCLUSION**

22 For the reasons stated above, the motion for judgment on the pleadings is **DENIED**.

24 **IT IS SO ORDERED.**

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26 Dated: December 20, 2019.  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE